LIBRARY
SUPREME COURT, U. S.

FILED
NOV 24 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 632

BEATRICE ALEXANDER, et als.,
Petitioners,

vs.

HOLMES COUNTY BOARD OF EDUCATION, et als.,
Respondents.

(INCLUDING CONSOLIDATED CASES)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING AND, IN THE ALTERNATIVE, CLARIFICATION OF MANDATE

JUDGE A. F. SUMMER
Attorney General of Mississippi
New Capitol Building
Jackson, Mississippi 39205

JOHN C. SATTERFIELD
SATTERFIELD, SHELL, WILLIAMS AND BUFORD
Post Office Box 466
Yazoo City, Mississippi 39194

Special Counsel for the Respondents, other than the United States of America, associated with other attorneys of record in each of the Consolidated Cases

E. L. MERDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030

INDEX

Preliminary Statement 1

I. The Respondents Have Not Been Accorded Due Process of Law. There Has Been No Hearing on the Merits by Any Court nor Any Opportunity for the Litigants to Be Heard on the Merits Through Their Attorneys 1

II. The Judgment Now Entered by the Court of Appeals Conflicts with Decisions of the Courts of Appeal of Other Circuits 8

III. The Constitutional Duty to Remove Vestiges of the Dual System of Public Schools Does Not Require the Entry of These Judgments 15

IV. The HEW Plans, with the Inclusion of the Alternative or "Interim" Steps in Student and Faculty Integration, Would Put into Immediate Effect Unitary Racially Non-Discriminatory School Systems 22

Exhibit A—Illustrations of "Composite Building Information" Contained in HEW Plans 31

Conclusion 37

Certificate of Service 38

Table of Cases

Adams v. *Mathews*, 403 F.2d 181 (5th Cir. 1968) 8, 11, 12, 13, 24, 25, 26, 27

Broussard v. *Houston Ind. School District*, 395 F.2d 817 21

Brown v. *Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) 13, 15

Carr v. *Montgomery County*, 23 L.Ed.2d 263 ..... 16, 22, 23, 24, 29

Clark v. *Board of Education of Little Rock School District*, 369 F.2d 661, rehearing denied, 374 F.2d 569 ..... 17, 18

Deal v. *Cincinnati Board of Education*, 369 F.2d 55 (6th Cir. 1966), cert. denied, 389 U.S. 847, 88 S.Ct. 39, 19 L.Ed.2d 114 (1967) 10, 11

Downs v. *Board of Education of Kansas City*, 336 F.2d 988 (1964), cert. denied, 380 U.S. 914, 85 S.Ct. 898, 13 L.Ed.2d 800 (1965) 13

Goss v. *Board of Education of Knoxville, Tennessee*, 406 F.2d 1183 ..... 9, 11, 17, 18

Green v. *County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968) 9, 10, 15, 22, 23, 24, 25, 26, 28

Hovey v. *Elliott*, 167 U.S. 409, 42 L.Ed. 415 5

Mapp v. *Board of Education of Chattanooga, Tennessee*, 373 F.2d 75 14

Monroe v. *Board of Commissioners of the City of Jackson, Tennessee*, 380 F.2d 955 (6th Cir.) 9, 15, 16, 17, 22, 23, 24, 25, 28

Morgan v. *United States of America*, 304 U.S. 13, 82 L.Ed. 1129 6

Powell v. *Alabama*, 287 U.S. 45, 77 L.Ed. 158 7

Raney v. *Board of Education of Gould, Arkansas*, 391 U.S. 443 (1968) 9, 15, 22, 23, 24, 25, 28

Springfield School Committee v. *Barksdale*, 348 F.2d 361 12

U.S.A. v. *Jefferson*, 380 F.2d 385 ..... 1, 7, 23

United States v. *Board of Ed. Polk County*, 395 F.2d 66, 69 27

United States v. *Cook County*, 404 F.2d 1125 13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 632

BEATRICE ALEXANDER, et als.,
Plaintiffs-Appellants-Petitioners,

vs.

HOLMES COUNTY BOARD OF EDUCATION, et als.,
Defendants-Appellees-Respondents.

JOAN ANDERSON, et als.,
Plaintiffs-Appellants-Petitioners,

UNITED STATES OF AMERICA,
Intervenor-Appellant-Respondent,

vs.

CANTON MUNICIPAL SCHOOL DISTRICT, et als., and
MADISON COUNTY SCHOOL DISTRICT, et als.,
Defendants-Appellees-Respondents.

ROY LEE HARRIS, et als.,
Plaintiffs-Appellants-Petitioners,

vs.

YAZOO COUNTY BOARD OF EDUCATION, et als.,
Defendants-Appellees-Respondents.

JOHN BARNHARDT, et als.,
Plaintiffs-Appellants-Petitioners,

vs.

MERIDIAN SEPARATE SCHOOL DISTRICT, et als.,
Defendants-Appellees-Respondents.

DIAN HUDSON, et als.,
Plaintiffs-Appellants-Petitioners,

UNITED STATES OF AMERICA,
Intervenor-Appellant-Respondent,

vs.

LEAKE COUNTY SCHOOL BOARD, et als.,
Defendants-Appellees-Respondents.

JEREMIAH BLACKWELL, JR., et als.,
Plaintiffs-Appellants-Petitioners,

vs.

ISSAQUENA COUNTY BOARD OF EDUCATION, et als.,
Defendants-Appellees-Respondents.

CHARLES KILLINGSWORTH, et als.,
Plaintiffs-Appellants-Petitioners,

vs.

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT and
QUITMAN CONSOLIDATED SCHOOL DISTRICT,
Defendants-Appellees-Respondents.

UNITED STATES OF AMERICA,
Plaintiff-Appellant-Respondent,

GEORGE MAGEE, JR.,
Intervenor-Petitioner,

vs.

NORTH PIKE COUNTY CONSOLIDATED SCHOOL
DISTRICT, et als.,
Defendants-Appellees-Respondents.

UNITED STATES OF AMERICA,
Plaintiff-Appellant-Respondent,

GEORGE WILLIAMS, et als.,
Intervenors-Petitioners,

vs.

WILKINSON COUNTY SCHOOL DISTRICT, et als.,
Defendants-Appellees-Respondents.

PETITION FOR REHEARING AND, IN THE ALTERNATIVE, CLARIFICATION OF MANDATE

PRELIMINARY STATEMENT

In accordance with the provisions of Rule 58 of the Rules of this Court, the respondents filed this petition for rehearing and, in the alternative, for clarification of the Per Curiam mandate rendered in the above styled consolidated causes on October 29, 1969, state the grounds for such belief as hereinafter set forth.

I.

The Respondents Have Not Been Accorded Due Process of Law. There Has Been No Hearing on the Merits by Any Court nor Any Opportunity for the Litigants to Be Heard on the Merits Through Their Attorneys.

The nine cases consolidated for the purposes of the petition for writ of certiorari are a portion of the twenty-five cases consolidated under Docket Nos. 28,030 and 28,042 by the Court of Appeals for the Fifth Circuit. The opinion therein was rendered July 3, 1969, and appears as *U.S.A., et als.*, v. *Hinds County, et als.*, not yet reported. As was found in such opinion, all of these school districts had been operating for a number of years under a Jefferson type decree which provided a freedom of choice plan as authorized and delineated in *Jefferson II*. *U.S.A.* v. *Jefferson*, 380 F.2d 385.

The Per Curiam mandate dated October 29, 1969, after requiring that the school systems here involved

should not operate as dual school systems based on race but should "begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color", provided as follows:

> The Court of Appeals *may in its discretion* direct the schools here involved to accept *all or any part* of the August 11, 1969, recommendations of the Department of Health, Education, and Welfare, *with any modifications which that court deems proper* insofar as those recommendations insure a totally unitary school system for all eligible pupils without regard to race or color.

The Court of Appeals for the Fifth Circuit has now acted under the circumstances hereinafter fully detailed. It has substituted for all of the Jefferson type decrees providing for freedom of choice and has rendered a decree, the nature of this decree will be hereinafter described. Attached to this decree are the thirty HEW plans filed on August 11, 1969. With the very minor exceptions detailed in the decree, these are put in full force and effect in every particular. The Court did not permit the alternate step procedure (referred to in many plans as "interim steps") to be utilized.

On October 29 the Per Curiam opinion of the Supreme Court was rendered. Copies thereof were received by attorneys for the defendants on or about Friday, October 31, and Saturday, November 1.

On Friday, October 31, the Court of Appeals issued its order directing all parties to all twenty-five suits to file with the Clerk of that Court on or before Wednesday, *November 5*, their recommended and proposed orders to effectuate and implement the opinion and decree of this Court. Such order was received by the attorneys for the parties in due course of the mails, a few being orally notified.

The order of the Court of Appeals issued on Friday, October 31, contained the following directions:

> Appellants, appellees and the United States of America as amicus or intervenor shall file with the Clerk of this Court on or before the fifth day of November, 1969, their recommended and proposed orders which will properly effectuate and implement the opinion and decree of the Supreme Court of the United States rendered on October 29, 1969, in the above named cases.

On Monday, November 3, attorneys for the defendants were advised by telephone and otherwise to be present in New Orleans before the Court of Appeals at 1:00 P.M. on Thursday, November 6, to attend a pre-order conference, and to have the superintendents of the school districts present at that time.

On Wednesday, November 5, the various districts filed their proposed orders embodying plans which had been very hastily prepared and revised over the week end, these being in the hands of the Court for from twenty-four to thirty-six hours prior to the "pre-order conference" held at 1:00 P.M. on Thursday, November 6. In the meanwhile, the attorneys for the private plaintiffs had sent to the Court copies of the several plans of desegregation filed by HEW on August 11. Hence a very few hours was consumed by the Court of Appeals in a comparison of these plans.

The oral notification to attorneys for the school districts to be present at the "pre-order conference" on November 6 included a statement that no arguments would be received on that date but there would only be a discussion of the order. The transcript of the proceedings on that date includes the following description of what occurred at the "pre-order conference":

(Page references are to the transcript.)

(p. 2) Ladies and gentlemen, we have called this pre-order conference today for the purpose of making some announcements and also to exchange views. After we make some statements, we want everyone to feel free to ask questions. *We don't intend to have any legal arguments, as such, but we do think it would be well for anyone that has questions, that you feel free to make such inquiries as you may have. . . .*

(p. 3) We have also studied the Supreme Court decision in these cases and we are of the view that action is required, and immediate action. . . .

(p. 5) We have prepared a draft order, it is not a final Order. We hope to put the Order out tomorrow. We did not want to put an order out until we had this conference and we want to tell you generally what is in the order now so that you will be advised as to *what questions you may wish to pose.*

(p. 6) Now, we are going on then, and we say to effectuate the conversion of these school systems to *unitary school systems within the context of the Supreme Court order* the following things have to be done, and then *generally* we are *putting into effect in every case*, except the ones I will tell you about, the recommended plan of the Office of Education, HEW. *And that is a permanent plan and not the interim plan.*

In accordance with the announcement and requirement of the Court, no argument was presented by any of the attorneys. No briefs on the merits were prepared within the three business days involved nor permitted to be filed by the Court. No hearing of any kind was had in the Court of Appeals at this or any other time, concerning the judgments proposed to be entered and the specific, clear, detailed, and revoluntionary provisions thereof, embodied therein through attachment of the plans filed by HEW on August 11.

Never in the history of jurisprudence in the United States has the fundamental concept of due process of law been so flagrantly violated. The following has occurred:

1. The original judgment of the Court of Appeals of July 3 set up a procedure whereby hearings would be had and due process of law completed.

2. The amendatory order of August 28, 1969, entered by the Court of Appeals also set up a procedure whereby hearings would be had and due process of law completed.

3. The mandate of the Supreme Court of October 29, 1969, provided:

> The Court of Appeals may make its determination and enter its order without further arguments or submissions.

4. The Court of Appeals having elected to prohibit all attorneys from presenting either briefs or oral arguments on the merits and not to consider any evidence before a Master or otherwise, due process of law was never accorded to either the United States as plaintiff or intervenor in twenty of these suits, nor to the school districts as defendants in twenty-five of these suits. (The Court of Appeals applied the mandate of this Court to all twenty-five consolidated cases.)

Every citizen of the United States is protected by the constitutional guarantee of due process of law. This is fundamental and has always been one of the basic concepts of our system of justice. One of the early statements of this fundamental constitutional right, which lives today for the protection of every citizen, was made by this Court through Justice White in *Hovey* v. *Elliott*, 167 U.S. 409, 42 L.Ed. 415, as follows:

> The fundamental conception of a court of justice is condemnation *only after hearing*. To say that courts

have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert *the court exercising such an authority into an instrument of wrong and oppression*, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends. . .

In *Galpin* v. *Page*, 85 U.S. ....., 18 Wall. 350 [21:959], the court said (p. 368 (963)):

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; *it is judicial usurpation and oppression, and can never be upheld where justice is justly administered.*"

Again, in *Ex parte Wall*, 107 U.S. 289 [27:562]; the court quoted with approval the observations as to "due process of law" made by Judge Cooley, in his Constitutional Limitations, at page 353, where he says:

"Perhaps no definition is more often quoted than that given by Mr. Webster in the *Dartmouth College Case*, 17 U.S. ....., 4 Wheat. 518 [4:629]: 'By the law of the land is most clearly intended in the general law; *a law which hears before it condemns*, which proceeds upon inquiry and *renders judgments only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society.*' "

In *Morgan* v. *United States of America*, 304 U.S. 13, 82 L.Ed. 1129, this Court said through Chief Justice Charles Evans Hughes:

The right to a hearing embraces *not only the right to present evidence* but also a reasonable opportunity

> to know the claims of the opposing party and to meet them. *The right to submit argument implies that opportunity; otherwise the right may be but a barren one.*

Here, there has never been an opportunity for evidence to be introduced, there has been no opportunity whatsoever for the parties to be heard by their attorneys, in the District Court, in the Court of Appeals or in the Supreme Court of the United States as to any matter pertaining to the merits of the judgment which has been entered. The present judgment sets aside each judgment under which each of these school districts had been operating for a number of years, a judgment theretofore approved by the Court of Appeals of the Fifth Circuit in *Jefferson II*. It has destroyed in every district freedom of choice. It has required compulsory integration of every faculty and staff to the racial balance existing in the entire system. It will require compulsory assignment of students by use of pairing, racial zoning or direct assignment. In most instances this will also approach a racial balance and in every instance it is designed to and will very materially remove existing racial imbalance. This action falls squarely within the rules announced by this Court in *Powell* v. *Alabama*, 287 U.S. 45, 77 L.Ed. 158, in which this Court said:

> . . . The words of Webster, so often quoted, that by "the law of the land" is intended "a law which hears before it condemns," have been repeated in varying forms of expression in a multitude of decisions. In Holden v. Hardy, 169 U.S. 366, 389, 42 L.Ed. 780, 790, 18 S.Ct. 383, the necessity of due notice *and an opportunity of being heard is described as among the "immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard."*

And Mr. Justice Field, in an earlier case, Galpin v Page, 18 Wall. 350, 368, 369, 21 L.Ed. 959, 963, 964,

> said that the rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. *"Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered."*

This Court is not now considering actions taken on or prior to July 3, 1969. *There has been no hearing on the merits upon any plan of desegregation embodied in the judgments entered on November 7.* Moreover, no court has permitted the plaintiff, the United States of America, or the defendants in these cases to be heard on the merits by brief or otherwise. Not one iota of testimony has been permitted before any court upon any portion of the judgments and plans now put into effect.

II.

The Judgment Now Entered by the Court of Appeals Conflicts with Decisions of the Courts of Appeal of Other Circuits.

The judgment entered here results in complete destruction of freedom of choice plans being based upon dicta first appearing in *Adams:*[1]

> If in a school district there are still all-Negro schools *or* only a small fraction of Negroes enrolled in white schools, *or* no substantial integration of faculties and school activities then, as a matter of law, the existing plan fails to meet constitutional standards as established in Green.

It appears that the entry of this judgment also arises from a misunderstanding of what constitutes a dual system

---

1. *Adams* v. *Mathews*, 403 F.2d 181 (5th Cir. 1968).

of schools and a misunderstanding of the clause "a unitary nondiscriminatory school system".

Through a misconstruction of the "trilogy of cases", *Green*, *Monroe* and *Raney*, this panel of the Court of Appeals now finds itself in direct conflict with decisions of other circuits. The panel in *Adams* had before it a docket setting only. Yet, it seized upon numerous elements which were considered in combination and separated them, so that each separate element is now made the sine qua non of continuance of freedom of choice. This is also true in the varying definitions of what constitute the "vestiges of a dual school system" that must be removed.

The Court of Appeals of the Sixth Circuit determined on February 10, 1969, in *Goss v. Board of Education of Knoxville, Tennessee*, 406 F.2d 1183, that the elimination of all-Negro and all-white schools is not a condition precedent to either the establishment of a unitary, nonracial school system, or to the continuation of a freedom of choice plan of desegregation. In the Knoxville system there were five all-Negro schools and twenty-nine schools having faculties of only one race. It also found that in 1960 the district had "a school system completely and de jure segregated both as to students and faculty". In holding that the Knoxville school system was constitutionally acceptable, the Court of Appeals said:

> Preliminarily answering question I, it will be sufficient to say that *the fact that there are in Knoxville some schools which are attended exclusively or predominantly by Negroes does not by itself establish that the defendant Board of Education is violating the constitutional rights of the school children of Knoxville.* Deal v. Cincinnati Bd. of Education, 369 F.2d 55 (6th Cir. 1966), cert. denied, 389 U.S. 847, 88 S.Ct. 39, 19 L.Ed.2d 114 (1967); Mapp v. Bd. of Education, 373 F.2d 75, 78 (6th Cir. 1967). *Neither does the fact*

> *that the faculties of some of the schools are exclusively Negro prove, by itself, violation of Brown.*

The Court then discussed the rule set forth in *Green*, including in the statement that the school boards are "charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch". In applying this to the Knoxville District and discussing its effect, the Court of Appeals of the Sixth Circuit said:

> The Court further said that it would be their duty "to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U.S. at 437-438, 88 S.Ct. at 1694. We are not sure that we clearly understand the precise intendment of the phrase "a unitary system in which racial discrimination would be eliminated," *but express our belief that Knoxville has a unitary system designed to eliminate racial discrimination.*

The Court brushed aside the position that different constitutional principles should be applied to southern states where there had been in the past de jure segregation as contrasted to northern states where there had been in the past de facto segregation. This was of particular importance as *Deal* involved formerly de facto segregation and *Goss* involved formerly de jure segregation. The Court said:

> In Monroe v. Bd. of Commissioners, 380 F.2d 955, 958 (6th Cir. 1967), we expressed *our view that the end product of obedience to Brown I and II need not be different in the southern states, where there had been de jure segregation, from that in northern states in which de facto discrimination was a fortuity.* Our observations in that regard were not found invalid by the Supreme Court's opinion reversing our Monroe

decision. See Monroe v. Board of Commissioners, 391 U.S. 450, 88 S.Ct. 1700, 20 L.Ed.2d 733 (1968).

The constitutional principles thus found to be applicable to both southern states and northern states were stated by the Sixth Circuit in *Deal*, cited as supporting authority in *Goss*. *Deal* involved the Cincinnati school system in which de facto segregation had resulted in heavy racial imbalance in the schools.[2] Racial discrimination may be removed by different methods, including freedom of choice plans, validly set up, properly administered, with choices freely exercised without external pressures so that the plan itself (without regard to the statistical results produced by choices thereunder) is constitutionally acceptable. *Adams* and *Hinds County* are actually bottomed solely upon statistics and are in direct conflict with both *Goss* and *Deal*. In *Deal* the Sixth Circuit said:

> The cases recognize that the calculus of *equality is not limited to the single factor of "balanced schools"; rather, freedom of choice under the Fourteenth Amendment is a function of many variables* which may be manipulated differently to achieve the same result in different contexts. . . .
>
> *This is in accord with our holding that bare statistical imbalance alone is not forbidden.* There must also be present a quantum of *official discrimination* in order to invoke the protection of the Fourteenth Amendment. . . .

---

2. The report of the Cincinnati school system to HEW for the school year 1968 revealed that of the 106 schools in the Cincinnati Public School System, forty were composed of students of one race (i.e., more than 99 per cent Negro or 99 per cent white students), of which thirteen schools were Negro and twenty-seven schools were white.

> Finally, in the one case in which *a district court apparently accepted the appellants' theory of racial imbalance*, Barksdale v. Springfield School Comm., 237 F.Supp. 543 (D.Mass. 1965), *the first Circuit, in vacating the decision* and dismissing the complaint without prejudice *specifically rejected any such asserted constitutional right*. Springfield School Comm. v. Barksdale, 348 F.2d 261, 264 (1st Cir. 1965).

Adams and its progeny, including *Hinds County*, are in direct conflict with *Springfield School Committee* v. *Barksdale*, 348 F.2d 361, rendered by the Court of Appeals of the First Circuit in 1965. The district court found that two of the elementary schools had over 80 percent Negro pupils, that fourteen elementary schools had no Negro pupils or less than one per cent Negro pupils, and that the school system was racially imbalanced. The Court of Appeals said:

> Having reached its conclusions, the court ordered the defendants to submit a plan to correct racial imbalance in the Springfield schools.

The Court vacated the order of the district court and reversed, stating the constitutional principles as follows:

> Certain statements in the opinion, notably that *"there must be no segregated schools,"* suggest an absolute right in the plaintiffs to have what the court found to be "tantamount to segregation" removed at all costs. *We can accept no such constitutional right.* Cf. Bell v. School City of Gary, 7 Cir., 1963, 324 F.2d 209, cert. den. 377 U.S. 924, 84 S.Ct. 1223, 12 L.Ed.2d 216; Downs v. Board of Education, *10 Cir.*, 1945, 336 F.2d 988, cert. den. 380 U.S. 914, 85 S.Ct. 898, 13 L.Ed.2d 800. . . .
>
> But more fundamentally, when the goal is to equalize educational opportunity for all students, it would be no better to consider the Negro's special interests

exclusively than it would be to disregard them completely.

The hard and fast *Adams* rule, the statistically-based *Hinds County* decision, and like decisions conflict with *United States* v. *Cook County*, 404 F.2d 1125, 1135, decided by the Court of Appeals of the Seventh Circuit on December 17, 1968. The panels of this Circuit have brushed aside good faith. They require hard and fast statistical results *now*. To the contrary, the Court said in *Cook County*:

> *There is no hard and fast rule that tells at what point desegregation of a segregated district or school occurs.* The court in Northcross said the "minimal requirements for non-racial schools are geographic zoning, according to the capacity and facilities of the buildings and admission to a school according to residence as a matter of right." 333 F.2d at 662. On the other hand, "*The law does not require a maximum of racial mixing or striking a rational balance accurately reflecting the racial composition of the community or the school population.*" United States v. Jefferson County Board, 372 F.2d 836, 847, n. 5 (5th Cir. 1966) aff'd en banc, 380 F.2d 385 (5th Cir.), cert. denied, Cado Parish School Board v. United States, 389 U.S. 840, 88 S.Ct. 67, 19 L.Ed.2d 103 (1967).

By the entry of this judgment there arises a conflict with the opinion of the United States Court of Appeals for the Tenth Circuit in *Downs* v. *Board of Education of Kansas City*, 336 F.2d 988 (1964), cert. denied 380 U.S. 914, 85 S.Ct. 898, 13 L.Ed.2d 800 (1965). This involved the public schools of the Kansas City, Kansas, school system, which was operated on a segregated basis prior to *Brown I*. Thereafter the schools were integrated based chiefly upon zones and neighbor-

hood school systems including the right of transfer. The Court held:

> There is, to be sure, *a racial imbalance* in the public schools of Kansas City. . . .
>
> *Appellants also contend that* even though the Board may not be pursuing a policy of intentional segregation, there is still segregation in fact in the school system and under the principles of Brown v. Board of Education, supra, *the Board has a positive and affirmative duty to eliminate segregation in fact as well as segregation by intention.* While there seems to be authority to support that contention, *the better rule is that although the Fourteenth Amendment prohibits segregation, it does not command integration of the races in the public schools and Negro children have no constitutional right to have white children attend school with them.* (Citing authorities).

See also *Mapp* v. *Board of Education of Chattanooga, Tennessee*, 373 F.2d 75, rendered by the United States Court of Appeals for the Sixth Circuit. This involved a school system in which de jure segregation continued until it was removed by a grade-to-grade extension of a freedom of choice plan resulting in "full integration of all grades in September 1966". In response to an attack upon the plan by the plaintiffs, the Court upheld the plan and said:

> To the extent that plaintiffs' contention is based on the assumption that the School Board is under a constitutional duty to balance the races in the school system in conformity with some mathematical formula, it is in conflict with our recent decision in Deal v. Cincinnati Board of Education, 369 F.2d 55 (6th Cir. 1966).

III.

The Constitutional Duty to Remove Vestiges of the Dual System of Public Schools Does Not Require the Entry of These Judgments.

The Court of Appeals has construed the Per Curiam order as either overruling or substantially modifying *Green, Raney* and *Monroe*. It has also construed such order to require entry of judgments resulting in compulsory integration of students and faculty and the elimination of all freedom of choice. Confusion has arisen from the various interpretations of the duty of school boards articulated in *Green*:

> School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly *charged with the affirmative duty* to take whatever steps might be necessary to *convert to a unitary system in which racial discrimination would be eliminated root and branch.* See Cooper v. Aaron, supra, at 7, 3 L.Ed.2d at 10; Bradley v. School Board, 382 U.S. 103, 15 L.Ed.2d 187, 86 S.Ct. 224; cf. Watson v. City of Memphis, 373 U.S. 526, 10 L.Ed.2d 529, 83 S.Ct. 1314. The constitutional rights of Negro school children articulated in Brown I permit no less than this: *and it was to this end that Brown II commanded school boards to bend their efforts.* . . . Note. "We bear in mind that the court has not merely the power but the duty to render a decree which will *so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.*" Louisiana v. United States, 380 U.S. 145, 154, 13 L.Ed. 2d 709, 715, 85 S.Ct. 817.

Although the passage of time now requires more realistic results and more comprehensive steps without further delay, the basic constitutional principles originally announced in *Brown I* have not been changed in the succeed-

ing pronouncements by the Supreme Court up to and including *Carr.*[3]

Monroe v. *Board of Commissioners of the City of Jackson, Tennessee*, 380 F.2d 955 (6th Cir.), involved a formerly racially segregated de jure school system. Because of its significance here and its direct conflict with these judgments, we quote from such decisions:

> Appellants argue that the courts must now, by reconsidering the implications of the Brown v. Board of Education decisions in 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) and 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), and upon their own evaluation of the commands of the Fourteenth Amendment, require school authorities to take affirmative steps to eradicate that racial imbalance in their schools which is the product of the residential pattern of the Negro and white neighborhoods. The District Judge's opinion discusses pertinent authorities and concludes that *the Fourteenth Amendment did not command compulsory integration of all of the schools regardless of an honestly composed unitary neighborhood system and a freedom of choice plan. We agree with his conclusion.* . . . He concluded "*We read Brown as prohibiting only enforced segregation.*" *369 F.2d at 60.* We are at once aware that we were there dealing with the Cincinnati schools which had been desegregated long before Brown, whereas *we consider here Tennessee schools desegregated only after and in obedience to Brown. We are not persuaded*, however, that we should devise a mathematical rule that will *impose a different and more stringent duty upon states which, prior to Brown, maintained a de jure biracial school system, than upon those in which the racial imbalance in its schools has come about from so-called de facto segregation*—this to be true even though the current problem be the same in each state.

---

3. *Carr* v. *Montgomery County*, 23 L.Ed.2d 263.

> However ugly and evil the biracial school systems appear in contemporary thinking, they were, as *Jefferson*, supra, concedes, de jure and were once found lawful in Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), and such was the law for 58 years thereafter. *To apply a disparate rule because these early systems are now forbidden by Brown would be in the nature of imposing a judicial Bill of Attainder.* Such proscriptions are forbidden to the legislatures of the states and the nation—U.S. Const. Art. I, Section 9, Clause 3 and Section 10, Clause 1. *Neither, in our view, would such decrees comport with our current views of equal treatment before the law.*

A writ of certiorari was granted by the Supreme Court in this case and the decision appears as *Monroe*. The sole issue in that case was the constitutionality of a "free transfer" provision in the plan of desegregation. The same suit again came before the Court of Appeals of the Sixth Circuit on February 10, 1969, as *Goss*. The Court construed the holding of the Supreme Court in *Monroe* as follows:

> In Monroe v. Bd. of Commissioners, 380 F.2d 955, 159 (6th Cir. 1967), we expressed our view that the end product of obedience to Brown I and II *need not be different in the southern states, where there had been de jure segregation, from that in northern states in which de facto discrimination was a fortuity. Our observations in that regard were not found invalid by the Supreme Court's opinion reversing our Monroe decision.* See Monroe v. Board of Commissioners, 391 U.S. 450, 88 S.Ct. 1700, 20 L.Ed.2d 733 (1968).

When *Cooper* again reached the Court of Appeals of the Eighth Circuit the opinion was rendered as *Clark* v. *Board of Education of Little Rock School District*, 369 F.2d 661, rehearing denied, 374 F.2d 569. The Court delineated a school system and its operation which falls within the constitutional mandate of the Supreme Court as follows:

> *The Constitution prohibits* segregation of the races, the operation of a school system with dual attendance zones based upon race, and *assignment of students on the basis of race to particular schools.* If all of the students are, in fact, given a free and unhindered choice of schools, which is honored by the school board, it cannot be said that the state is segregating the races, operating a school with dual attendance areas or considering race in the assignment of students to their classrooms. ***We find no unlawful discrimination in the giving of students a free choice of schools.***

The school system of Little Rock had been a dual segregated school system. Hence, the decisions of the Eighth Circuit in *Clark* as well as the decision in *Goss* (both considering formerly de jure segregated systems) are directly applicable to this judgment.

The rule applied in *Clark* to the Little Rock school system is certainly applicable to the thirty districts here:

> Though the Board has a positive duty to initiate a plan of desegregation, the constitutionality of that plan does not necessarily depend upon favorable statistics indicating positive integration of the races. . . . The system is not subject to constitutional objections simply because large segments of whites and Negroes choose to continue attending their familiar schools. It is true that statistics on actual integration may tend to prove that an otherwise constitutional system is not being constitutionally operated. However, these statistics certainly do not conclusively prove the unconstitutionality of the system itself. . . .
>
> *In short, the Constitution does not require a school system to force a mixing of the races in school* according to some predetermined mathematical formula. Therefore, the mere presence of statistics indicating absence of total integration does not render an otherwise proper plan unconstitutional.

The initial step to determine what are vestiges of a racially discriminatory dual school system (in which separation of the races has been de jure) as distinguished from racially nondiscriminatory unitary school systems (in which separation of the races has been de facto) is to eliminate those elements common to both.

Compilations before the Court of Appeals were assembled from the statistical information filed with the Department of Health, Education and Welfare and show the racial composition of schools in the one hundred largest school districts in this nation as of October 15, 1968. They were filed by school districts under the requirements of Title VI of the Civil Rights Act of 1964 and are upon Civil Rights Forms OS/CR 102-1 and OS/CR 101. Most of these districts have never had a dual system.

Assuming that a school with less than one percent of the minority race is an all-white or all-Negro school, of the 12,497 schools in the one hundred largest school districts in the United States 6,137 schools are either all-white or all-Negro. Thus, more than forty-eight percent of the schools in these districts are either all-white or all-Negro. It is also found that in districts having as much as twenty percent or more Negro student enrollment, only one district does not have within it all-Negro schools. This is the Rochester, New York, Monroe County School District. In the consolidated cases at bar only one of the thirty districts has less than twenty percent Negro student enrollment. These facts cannot be a "vestige of the dual system of schools" but resulted from the natural process of education in a unitary, non-racial school system:

District	Total Schools in Dist.	Schools with Faculty of One Race	Schools of One Race	All-Negro Schools
Chicago Public Schools, Chicago, Ill.	610	236	392	208
Indianapolis Public Schs., Indiana	119	1	52	17
Des Moines Community Schs., Iowa	81	52	36	—
Boston School Dept., Massachusetts	196	108	56	11
Detroit Public Schools, Michigan	302	10	98	67
Special School Dist. No. 1, Minneapolis, Minn.	98	52	42	—
St. Louis City Sch. Dist., Mo.	164	81	114	83
Kansas City School Dist., Mo.	99	14	43	19
Newark Public Schools Newark, N. J.	80	1	27	27
Oklahoma City Public Sch. Dist., I-89, Okla.	115	5	71	15
Dallas Indep. Sch. Dist., Texas	173	149	117	26
Los Angeles School Dist., Calif.	591	229	359	65
Sch. Dist. No. 1, City & Co. of Denver, Colo.	116	32	54	3
District of Columbia Public Schools	188	26	114	114
Gary Community Schools, Gary, Ind.	45	6	25	21
Cleveland, Ohio, Cuyahoga Co.	180	38	115	57

New York City Public Schs. N.Y., N.Y.	853	221	158	113
Houston Indep. Schools, Houston, Texas	225	9	139	61
School Dist. of Philadelphia, Pa.	278	3	37	63

Broussard[4] approved the Houston Independent School District as being in compliance with constitutional requirements under a freedom of choice plan. According to its official report as of October 15, 1968, there then remained sixty-one all-Negro schools, seventy-eight all-white schools, and there were eighty-six desegregated schools.

It is clear that the following do not constitute vestiges of a de jure racially discriminatory dual school system:

(1) All-Negro schools and all-white schools, identifiable as being attended by students of only one race or by students predominantly of one race.

(2) Schools being served by faculty and staff composed of members of one race or composed predominantly of members of one race.

(3) Schools in which the number of students of the two races do not materially vary from year to year, i.e., in which statistics do not demonstrate that the number of Negro students is increasing in a school attended predominantly by white students or in which Negro teachers are not increasing where the faculty is composed predominantly of members of the white race.

We respectfully submit that the entry of these judgments was the result of a misconstruction of the Per Curiam order dated October 29, 1969. It is clear that the Court of Appeals believed it had been expressly directed

---

4. *Broussard* v. *Houston Ind. School District*, 395 F.2d 817

to enter the judgments now in effect. A clarification of the mandate removing this belief would permit the Court of Appeals to enter judgments in accordance with *Green*, *Monroe*, *Raney* and *Carr* and other applicable decisions of this court. The entry of proper judgments within the scope of such decisions and what we believe to be the meaning of the Per Curiam order would remove the above conflicts with other Circuits.

IV.

The HEW Plans, with the Inclusion of the Alternative or "Interim" Steps in Student and Faculty Integration, Would Put into Immediate Effect Unitary Racially Non-Discriminatory School Systems.

The HEW plans of August 11, 1969 all included a two-step procedure. As to students, the first step (in most of the plans called an "interim" step) will result in substantial integration of students and faculty. These alternative or initial steps modify the freedom of choice plans in various ways including pairing of grades, closing of schools, zoning to bring about fixed student attendance patterns, etc. They generally required faculty integration to the extent of one-half of the ultimate requirement.

When the Per Curiam opinion is construed in the context of previous decisions of this Court its description of a unitary school system is clear. The mandate would require the Court of Appeals to enter an order as to the school districts:

> . . . directing that they begin immediately to operate as unitary school systems within *which no person should have to be effectively excluded from any school because of race or color.*

The key is the removal of all discrimination, in compulsory and complete integration attained by various forms of mandatory asignment of students.

It does not seem to have been generally recognized that the Supreme Court of the United States in *Green, Raney, Monroe* and *Carr* not only failed to place its stamp of approval upon *Jefferson II*, but *affirmatively declined to hold that the Fourteenth Amendment requires compulsory integration in public schools.* These cases clearly and unmistakably describe the school system which meets all constitutional guarantees.

The key is complete and immediate removal of racial discrimination, and not complete compulsory integration of students through mandatory assignment of students by various means.

In *Green* such system is described as: "*A racially nondiscriminatory school system*"—"a unitary, nonracial system of public education"—"a unitary system in which racial discrimination would be eliminated root and branch."

In *Raney* such system is described as: "*A unitary, nonracial school system*".

In *Monroe* such school system is described as: "A racially non-discriminatory system"—"*a unitary system in which racial discrimination would be eliminated root and branch*"—"a system without a 'white' school and a 'Negro' school, just schools".

In *Carr* such school system is described as: "*A system of public education free of racial discrimination*"—"a completely unified unitary nondiscriminatory school system"—"a racially nondiscriminatory school system".

The Supreme Court affirmatively declined to hold in *Green* that the Fourteenth Amendment requires "compulsory integration", saying:

> The Board attempts to cast the issue in its broadest form by arguing that its "freedom-of-choice" plan may be faulted only *by reading the Fourteenth Amendment as universally requiring "compulsory integration"*, a reading it insists the wording of the Amendment will not support. *But that argument ignores the thrust of Brown II.* In the light of the command of that case, *what is involved here is the question whether the Board has achieved the "racially non-discriminatory school system" Brown II held must be effectuated in order to remedy the established unconstitutional deficiencies of its segregated system.*

The *Adams* dicta upon which these judgments are based arose through the consideration of one paragraph, one sentence or even a portion of one sentence in *Green*, *Raney*, or *Monroe*. A study of these opinions as a whole (supplemented by *Carr*) reveal the fallacy of the reasoning upon which the *Adams* dicta was based. The panels of this Court have failed to follow the teachings of these cases. It is only by a consideration of the many complex factors entering into the educational process and particularly into the desegregation of a formerly de jure and formerly de facto segregated schools, that we are able to chart the course which is in the best interest of the students *and* of our public schools. This was the objective stated by Mr. Justice Black in *Carr*.

In *Green* the Supreme Court found that the school system of New Kent County was a dual school system and described such system as follows:

> . . . *Racial identification of the system's schools was complete*, extending not just to the composition of student bodies at the two schools but *to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities.*

In *Green*, *Raney* and *Monroe* there was considered many of the factors which, *when taken as a whole and in combination*, should be utilized in determining the application of the following test:

> Where the Court finds the board to be acting in good faith and the proposed plan to have real prospects of dismantling the state-imposed dual system "at the *earliest practicable date*" then the plan may be said to provide effective relief. . . . Moreover, whatever plan is adopted will require evaluation in practice. . . . The elements elucidated in these cases included:
>
> 1. Every facet of school operations;
> 2. Faculty, staff and student body;
> 3. Transportation and construction of new buildings;
> 4. Extracurricular activities and facilities;
> 5. Majority to minority transfer;
> 6. Method of exercising the freedom of choice;
> 7. Assignment of students who did not exercise the freedom of choice;
> 8. Whether or not the "public school facilities for Negro pupils (were) inferior to those provided for white pupils";
> 9. Operation of the freedom of choice plan "in a constitutionally permissible fashion";
> 10. "All aspects of school life including faculties and staffs";
> 11. Whether "the board had indeed administered the plan in a discriminatory fashion";
> 12. The comparative treatment of students attempting "to transfer from their all-Negro zone schools to schools where white students were in the majority";

13. The comparative treatment of "white students seeking transfers from Negro schools to white schools";

14. Whether "the transfer (provision) lends itself to perpetuation of segregation".

Within the broad statements of *Green* fall the following additional phases of a school system:

15. Athletic activities within the schools;

16. Parent-teacher associations;

17. Faculty and staff meetings within schools and of faculties and staffs of the various schools at the elementary, junior high school and high school levels;

18. School-sponsored visitation of student body officers and student committees;

19. In-service training of teachers and staff to assist in the desegregation process;

20. Participation by students in various types of student organizations.

Yet under the *Adams* dicta, upon which this judgment is based (thereafter quoted by several panels) any one of the following factors standing alone will outlaw freedom of choice and require compulsory integration by mandatory student assignment (racial zoning or racial individual assignments).

If there is an all-Negro school in the district freedom of choice is "impermissible"; or

If "only a small fraction of Negroes [have] enrolled in white schools" freedom of choice is impermissible; or

If "no substantial integration of faculties and school activities" has been attained, freedom of choice is impermissible.

On April 18, 1968, it was held in *United States* v. *Board of Ed. Polk County*, 395 F.2d 66, 69:

> The record here discloses *what the courts have previously commented on*, that is *it is rare, almost to the point of nonexistent, that a white child, under a freedom of choice plan, elects to attend a "predominantly Negro" school.* As this court said in the first *Jefferson* case:
>
> > "In this circuit white students rarely choose to attend schools identified as Negro schools. . . ."

Yet on August 20, 1968, only four months later, the *Adams* dicta outlawed any freedom of choice plan "if in a school district there are still all-Negro schools".

Again on September 24, 1968, in *Graves* the panel said:

> In its opinion of August 20, 1968, this Court noted that, under *Green* (and other cases), *a plan that provides for an all-Negro school is unconstitutional.*

Judge Bell sounded a warning in *Jefferson IV* which is accentuated by the decision in these twenty-five consolidated cases. The deviation from accepted constitutional principles and the destructive effect upon the desegregation process is increasing with every decision by a panel of this Court. On July 1 of this year, Judge Bell said in *Jefferson IV*:

> I concur in the opinion and the result thereof *except to the extent, if any, that the decisions of this court cited therein may exceed the requirements laid down by the Supreme Court* in *Green* v. *County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968); *Raney* v. *Board of Education of Gould, Arkansas*, 391 U.S. 443 (1968); *Monroe* v. *Board of Commissioners of the City of Jackson, Tennessee*, 391 U.S. 450 (1968), to-wit: that the dual school systems be disestab-

> lished. I am in fundamental disagreement with the approach of an appellate court stipulating the details of transition plans where couched in terms of constantly escalating interim demands. *The specter of escalation, with no end in sight, retards the disestablishment process.*
>
> Congress has never acted as it could have under Section 5 of the Fourteenth Amendment to set uniform standards for disestablishing dual school systems. Meanwhile, no court has defined "disestablishment". My view continues to be that school systems are entitled to know the ultimate standard. *United States* v. *Jefferson County Board of Education*, 5 Cir., 1967, 380 F.2d 385, dissenting opinion at p. 413.

It is clear that when the HEW plans are put into effect as terminal plans, including the alternate or "interim steps" in student and faculty integration, these plans will be operated as unitary non-racial non-discriminatory unitary school systems, unless the Court holds that every single element mentioned in *Green*, *Raney* and *Monroe* is a separate sine qua non of such system.

We respectfully submit that even if the most extreme interpretation were correct, alternate or "interim steps" are permitted. There is little difference betwen the word "immediately" used in the Per Curiam order of October 29 and the word "now" as was said in this connection by Judge Bell at the Pre-Order hearing (Tr. p. 6):

> Now, that is the language of the Supreme Court decision. It is a little different from some of the language used in the other Supreme Court decisions but probably means the same thing.

We attach as "Exhibit A" hereto, several typical illustrations of "composite building information" contained in the HEW plans showing the ultimate effect thereof without using the interim or alternate steps. It will be noted

that the student integration is substantially to a racial balance.

All of the 25 judgments entered in these cases (through attachment of detailed plans made a part of the general judgment) contain the ultimate mandatory provision that "principals, teacher-aides and other staff" shall be assigned:

> . . . that the ratio of negro to white teachers in each school, and the ratio of other staff each are substantially the same as each such ratio is to teachers and other staff, respectively in the entire school system.

The initial or alternative step in these judgments required a ratio balance to the extent of 50% of the ultimate goal. When the Court of Appeals put into effect the ultimate goal it has resulted in judgments violating the teaching of *Carr*.

COMPOSITE BUILDING INFORMATION FORM

ON B: PROJECTED ENROLLMENT 1969-70 · FRANKLIN COUNTY SCHOOLS

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
FRANKLIN	7-12.	1380	—	546	512	1058				
LILLIE MAE BRYANT	1-6	1350	—	537	560	1097				
TOTAL				1083	1072	2155				
JOHNS SPECIAL RETARDED	UNGRADED			11	3	14				
GRAND TOTAL				1094	1075	2169				

Exhibit A

31

COMPOSITE BUILDING INFORMATION FORM

DATE: Projected 1969-70 — Hobbs Elementary

Name of School	Grades	Capacity Perm.	Capacity P. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Hobbs Elem.	1-5	300	240	440	420	860	15	15	30	Permt.
Emerson	1-5	450		390	370	760	17	19	36	
		750	240	830	790	1620	32	34	66	

DATE: Projected 1969-70 — Lake County

Name of School	Grades	Capacity Perm.	Capacity P. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Lea	1-8			162	120	282				
South Lake	9-12			165	208	373				
Murphy	1-8			218	395	663				
Carver	1-12			200	400	600				
Stribling	1-12			250	150	400				
Coffman	1-8			536	757	1293				2 portables from Murphy
Jordan	9-12			307	394	701				
				2058	2324	4312				

SCHOOL SYSTEM INFORMATION FORM

DATE: PROJECTED 1969-70 LAUDERDALE COUNTY

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
SOUTH POINT	1-8	570	570	532	430	962				2 6th 3 portables
MAGEE EAST	1-8	1050	1050	420	500	920				6th 2 Portables
WEST	1-8	1050	1050	457	480	937				
COLLINSVILLE	1-8	750	750	332	116	448				
MIDDLETON	9-12	1350	1350	845	1192	1116				Portable 3

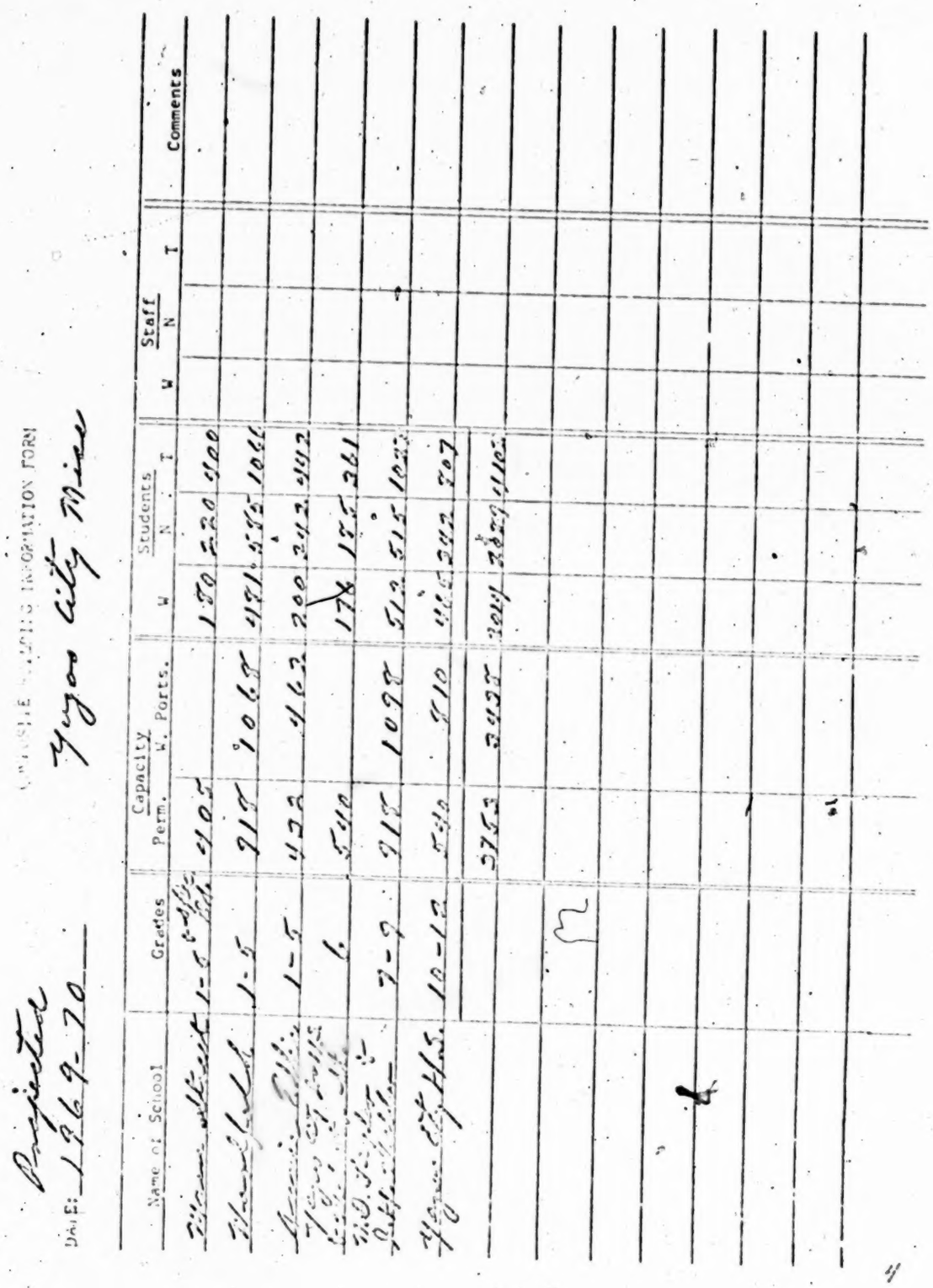
3059 1062 4851

* Separate figures on 1968-69 not available

SCHOOL SYSTEM INFORMATION FORM

DATE: Projected 1969-70 Lincoln County

Name of School	Grades	Capacity Perm.	Capacity W. Ports.	Students W	Students N	Students T	Staff W	Staff N	Staff T	Comments
Eva Harris High	10-12	540	660	350	206	556				4 aux. in Dry Creek
Loyd Starr Jr. High	4-9	425		209	165	374				
Progress Elem.	1-3	210		108	99	207				
West Lincoln	1-9	455		222	132	354				
Bogue Chitto	3-9	780		390	231	621				
Lincoln Co. Training	1-2	210		172	50	222				
Enterprise	1-9	360		220	135	355				
TOTAL				1671	1618	2689				



37

The result of the alternate or interim steps is the equivalent of pairing of three out of seven schools in Leake County; pairing of grades one through six in Franklin County; pairing of four out of seven schools in Lincoln County; pairing of seven out of twelve grades in the Holly Bluff District; pairing of students in three out of seven school buildings in the Yazoo City District and equivalent effect in Lauderdale County. As thus modified, freedom of choice would remain until September 1970 when the ultimate steps would be taken.

CONCLUSION

We respectfully submit that a rehearing should be granted in this matter or at least that the mandate be amended so as to clarify the discretion vested in the Court of Appeals and to also make it clear that complete integration of students and faculty comparable to the racial composition of the school system is not required.

We hereby certify as attorneys of record for the Respondents that this Petition for Rehearing is presented in good faith and not for delay.

Respectfully submitted,

JOHN C. SATTERFIELD

and

JUDGE A. F. SUMMER

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Rehearing were served on the opposing counsel on this 21st day of November, 1969, by mailing copies of same, postage prepaid, at the last known address as follows:

Melvyn R. Leventhal
Reuben V. Anderson
Fred L. Banks, Jr.
John A. Nichols
538-1 2 North Farish Street
Jackson, Mississippi 39202

Jack Greenberg
Jonathan Shapiro
Norman Chachkin
Suite 2030
10 Columbus Circle
New York, New York

Jeris Leonard
Assistant Attorney General
Department of Justice
Washington, D. C.

Erwin N. Griswold
Solicitor General of the U. S. Department of Justice
Washington, D. C.

Robert E. Hauberg
United States Attorney
Post Office Building
Jackson, Mississippi

JOHN C. SATTERFIELD

JUDGE A. F. SUMMER